IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WA.No. 1317 of 2004()

AGAINST THE JUDGEMENT IN WPC.39126/2003 Dated 31/03/2004
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APPELLANTS: RESPONDENTS 1 TO 4 & 17
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1. JOHN SEBASTIAN, PUTHENVEETTIL,
KARITHURA, CHAVARA.

2. MATHE BANABANTH, NEDULAZHIKATHU,
KOCHU VEEDU, KARITHURA, CHAVARA.

3. THOBIAS ANTONY, THYKKOOTTATHIL,
KARITHURA, CHAVARA.

4. JOHN VICTOR, NEDUVILAYYATHU VEEDU,
KARITHURA, CHAVARA.

5. PIUS VELLARIAN,CRASI MANDIRAM,
KULANGARA BHAGOM, CHAVARA.

BY ADV. SRI.N.DHARMADAN (SR.)
SMT.R.RANJINI

RESPONDENTS/PETITIONERS & RESPONDENTS 5 TO 16 & 18 TO 21:
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1. IRE LOADING UNLOADING WORKERS WELFARE
FORUM REG.NO.Q 657/88, CHAVARA RE.BY ITS
SECRETARY, H.B.LOPEZ.

2. K.RAJENDRANATHAN NAIR, PRESIDENT, IRE
LOADING UNLOADING WORKERS WELFARE FORUM,
REG.NO.1657.88, CHAVARA.

3. INDIA RARE EARTHS LIMITED, CHAVARA PLANT
CHAVARA, P.O. KOLLAM REP. BY ITS
EXECUTIVE DIRECTOR, K.RAJENDRANATHAN NAIR.

4. RAPHEL JACON, SHERLY
MANDIRAM, KARITHURA, CHAVARA, KOLLAM.

5. SEBASTIAN JOHN, KOIKKALAZHIKATHU,
KARITHURA, CHAVARA, KOLLAM.

6. EDWARD JOSEPH, PRESAD MANDIRAM,
KARITHURA, CHAVARA.

7. VARGHESE ANTONY, KADAVIL, KARITHURA,
CHAVARA.

8. CYRIL PATHROSE, THYKKOOTTATHIL,
KARITHURA,CHAVARA.

9. ZAPARIAN JOSEPH, KOCHUPATHIRU,
PURAYIODAM, KARITHURA, CHAVARA, KOLLAM.

10. FRANCIS VARGHESE, BLAKATHU VEEDU,
KARITHURA, CHAVARA, KOLLAM.

11. SENSILVUS ANTONY, PUTHEN VEEDU,
PADEETTATHIL, KARITHURA, CHAVARA, KOLLAM.

12. JOHN ANTONY, KADAVIL, KARITHURA,
CHAVARA, KOLLAM.

13. PETER ISTHANI, PHILOMINA MANDIRAM,
KARITHURA, CHAVARA , KOLLAM.

14. ALBEY MARKOSE, BLAKATH VEEDU,
KARITHURA, CHAVARA SOUTH.

15. PETER XAVIER, PARATHARAYIL, KARITHURA,
CHAVARA, KOLLAM.

16. JOHN VINCENT, SUNIL COTTAGE,
KARITHURA, CHAVARA KOLLAM.

17. MRS. JAIN ALIAS AMMINI VARGHESE,
THENINMOOTTIL, KARITHURA, CHAVARA KOLLAM.

18. AMBROSE LOUIS, ANADAVILASOM,
KARITHURA, CHAVARA SOUTH. KOLLAM.

19. ASSISTANT LABOUR COMMISSIONER (C)
TRIVANDRUM.

R3 BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN, Ag.C.J. &
M.N.KRISHNAN, J.

W.A.No.1317 of 2004

Dated, this the 13th day of March, 2007

JUDGMENT

Radhakrishnan, Ag.C.J.

Writ petition was preferred by respondents 1 to 3 herein seeking a writ of certiorari to quash Ext.P9 order and for a direction to the 21st respondent to dispose of Ext.P7 in accordance with law and also for other consequential reliefs. Petitioners are aggrieved by the order of the Assistant Labour Commissioner as according to them Ext.P9 order cannot be sustained in view of Ext.P2 agreement dated 20th November, 1993 by which it was agreed that the Forum will pay an ex-gratia payment in lieu of gratuity to those members retired/resigned/died on or after 1.4.1993. Seven days' wages for the services rendered with independent contractors prior to the formation of the IRE Loading Unloading Workers Welfare Forum and fifteen days' wages for the services rendered after the formation of the Forum were agreed upon between the parties. It was also agreed that in view of the above ex-gratia payment in

lieu of gratuity, the members or their unions will not claim gratuity in future. It was further agreed that if at all by any reason if any authority decides in future that the Forum members are eligible for gratuity, then the ex-gratia payment made will be adjusted against gratuity.

2. We have heard learned counsel for the appellants and counsel for the management.

3. The learned counsel for the appellants in support of his contention placed reliance on a judgment of this Court in O.P.No.798 of 1995, wherein the learned Single Judge referred to Section 4(2) of the Payment of Gratuity Act, 1972 and held that the petitioner therein is entitled to gratuity at the rate of fifteen days' wages and whereby the Court held that he is entitled to an amount of Rs.18,081/-. That judgment was not appealed against. Consequently, in paragraph 11 of the order, the Labour Commissioner held that the said judgment can be the basis on which claims could be decided.

4. Learned counsel for the management submitted that the

petitioner in O.P.No.798 of 1995 resigned from service on 31.7.1991 before the agreement was executed. Considering the fact that the amount to be paid was meagre the management did not file an appeal against that judgment and therefore that judgment cannot be the basis on which other claims could be settled.

5. The question as to whether Ext.P2 agreement entered into between the management and the unions is binding on all the workmen is a matter to be decided by the Commissioner. The mere fact that the judgment in O.P.No.798 of 1995 was not appealed against does not mean that the other claims be decided in the light of the said judgment, especially when the claimant in O.P.No.798 of 1995 left the service before the date of Ext.P2 agreement. We make it clear that the Commissioner has to examine all issues raised by the parties in accordance with law. In order to do so we set aside the impugned judgment of the learned Single Judge as well as Ext.P9 order and direct the Commissioner to pass final orders in accordance with law within a

period of six months from the date of receipt of a copy of this judgment with notice to all the parties. We also make it clear that we have not expressed any opinion on the merits of the case.

Subject to the above direction/observation the writ appeal is disposed of.

K.S.RADHAKRISHNAN,
Ag.CHIEF JUSTICE.

M.N.KRISHNAN,
JUDGE.

vns